(4)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

Writ Petition No. 173 /2002.

PETITIONER : Ramdeo s/o Late Janak, age 55 years, Occupation-Agriculture, r/o village Rajpur, P.S. Rajpur, Distt. Surguja, C.G.

P. R. No. 189/or
Presented by Shri M.F. Ahmadi
dated 21/1

V E R S U S.

RESPONDENTS. : 1.The State of Chhattisgarh, through Secretary, Panchayats. Raipur, C.G.

2.Returning Officer (Panchayats) Janpad Panchayat Rajpur, Block Rajpur, Distt. Surguja, C.G.

3.Collector, Surguja, Ambikapur, Distt. Surguja, C.G.

4.Rakesh Kumar Jha s/o R.U.Jha, age 26 years, Advocate, r/o village Budhabagicha, P.S. Rajpur, Dstt. Surguja, C.G.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

XI-HC-22

(46)

AFR

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P.No.173/2002

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	5/2/2002 Shri Sunil Sinha, learned counsel for the petitioner. Shri Goutam Bhaduri, learned GA for the respondents Nos.1, 2 and 3. Respondent no.4 in person. Heard finally. By this petition the petitioner has challenged the order dated 19/12/2001(Annexure P/3) passed by the respondent no.3 on the ground that the learned Tribunal has passed an order of recounting without recording the evidence and without following the procedure. Respondent no.4 while appearing in person submitted that he was present on 9/4/2001, but the Presiding Officer was on leave. He said that thereafter he could not appear. Learned counsel for the petitioner however submitted that without recording the evidence the matter cannot be decided and the recounting cannot be ordered when an application for recounting was not given.	

[पीछे देखिये

(47)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No.173/2002 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, respondent no.4 submitted that recounting has been properly ordered/ ~~Application was made~~ However it is admitted that both the parties have not adduced the evidence.

Matters like this where the parties are at issue and the pleadings are there denying the averments made in the petition, the election petition is to be decided in accordance with the procedure contemplated in M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995.

Rule 11 of the aforesaid Rules is quoted below:-

> "11. Procedure before the specified officer and his powers:- (1) Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:
> Provided that it shall only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him.
> (2) The specified officer, shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters:-

[पीछे देखिये

(48)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No.173/2002 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित – 3 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(a) discovery and inspection;
(b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
(c) compelling the production of document;
(d) examination of witnesses on oath;
(e) reception of evidence taken on affidavit; and
(f) issuing commission for examination of witnesses and summoning and examining suo motu any person whose evidence, appears to him to be material.

Rule 12 of the aforesaid Rules directs the duty of the parties to produce their witnesses which is quoted below:-

"12. Parties to produce their witnesses - It shall be the duty of the parties to produce their witnesses on the date fixed for evidence, and they shall not be entitled to an adjournment for non-attendance of their witnesses.
Provided that the specified officer may, at his discretion, order the issue of summons to any witness on the necessary process fee and costs being deposited by the party concerned.

Since the petitioner would like to give evidence, examine himself and the witnesses, the election petitioner / respondent No.4

[पीछे देखिये

(49)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P.No.173/2002

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

herein and the applicant who is a return candidate would like to rebut the evidence. Hence both the parties are granted opportunity to adduce their evidence.

Having thus considered the order of re-count is set aside. The matter is remitted back to the tribunal to afford opportunities to the parties to adduce evidence, and if the parties require that the process is to be issued since considerable time has elapsed, dasti service as deemed fit and proper may be affected, and decide the matter afresh as early as possible preferably within two months from the date of appearance of the parties before the tribunal which is given as 18.02.2002.

With the aforesaid observations this petition is disposed of.

Sd/-
Acting Chief Justice

[पीछे देखिये